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LATHAM & WATKINS LLP

September 28, 2005

Via Hand

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: IB Docket Nos. 05-220, 05-221

Dear Ms. Dortch:

Inmarsat submits this consolidated response to the September 14, 2005 *ex parte* submissions of TerreStar, and its affiliates TMI and MSV, which relate to issues raised in both of the proceedings identified above.[1] As a recent press release evidences, these entities are closely-related companies whose L-Band and 2 GHz businesses are being consolidated within Motient Corporation under the "MSV" and "TerreStar" monikers.[2] For the sake of simplicity, Inmarsat therefore collectively refers to these entities as MSV/TerreStar.

Most of the unsubstantiated allegations raised by MSV/TerreStar are firmly rebutted by Inmarsat's application for authority to provide 2 GHz MSS in the U.S., which

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1 Letter from Counsel to TMI and TerreStar to Secretary, FCC, IB Docket No. 05-221 (Sep. 14, 2005); Letter from Randy S. Segal, Senior Vice President and General Counsel, MSV, to Secretary, FCC, IB Docket No. 05-221 (Sep. 14, 2005).

2 News Release, *Motient Announces Transaction with Owners of Mobile Satellite Ventures and TerreStar Network: Restructuring and Simplification of Ownership Structure to Provide MSV and TerreStar Enhanced Access to Capital and Strategic Partners* (Sep. 22, 2005) (available at http://phx.corporate-ir.net/phoenix.zhtml?c=110135&p=irol-newsArticle&ID=760114&highlight=, last viewed Sep. 27, 2005). TerreStar is the corporate vehicle through which a Canadian license to exploit the 2 GHz band will be effectuated. MSV is the corporate vehicle through which Canadian and U.S. licenses to exploit the L-Band have been and will continue to be effectuated. MSV and TerreStar are now owned primarily by Motient, SkyTerra and TMI. Upon completion of the transaction, Motient will own all of MSV and TerreStar, other than the minority positions held directly by TMI.

Inmarsat filed on September 26, 2005.[3] That application demonstrates Inmarsat's clear intentions at 2 GHz, and its willingness to abide by Commission milestones and bond-posting requirements to secure the timely deployment of that competitive 2 GHz MSS system. Inmarsat takes this opportunity to (i) encourage the Commission to license more than a mere duopoly of MSS providers at 2 GHz, (ii) provide a brief overview of Inmarsat's 2 GHz system proposal, and (iii) correct the gross mischaracterizations of MSV/TerreStar in these proceedings.

A. Authorizing Additional 2 GHz MSS Providers Facilitates MSS Competition in the U.S.

MSV/TerreStar's plea that the Commission provide it a duopoly (with ICO) in the 2 GHz band is antithetical to Commission policy. The Commission has recognized its obligation to increase the chances that the American consumer will secure access to the significant promise of broadband MSS at 2 GHz, by ensuring that more than just two initial entrants will have the chance to deploy a 2 GHz MSS system:

> [T]he factors that have led courts to disfavor mergers to duopoly also support establishing a procedure that will maintain at least three competitors in a frequency band, unless an interested party can rebut our presumption that three is necessary to maintain a competitive market.[4]

No one, neither MSV/TerreStar nor ICO, has presented the requisite "convincing evidence that allowing only two licensees in the [2 GHz] frequency band will result in extraordinarily large, cognizable, and non-speculative efficiencies."[5] Moreover, MSV/TerreStar has not demonstrated that it needs access to more 2 GHz spectrum in order to have a viable 2 GHz business. In fact, Inmarsat's willingness to deploy a 2 GHz MSS system to serve the U.S., with the very same spectrum assignment that MSV/TerreStar holds, shows that a 2 GHz MSS system is viable with MSV/TerreStar's current 2 x 4 MHz assignment.

In what has become a predictable reaction each time someone proposes a competitive MSS alternative to it in the U.S., MSV/TerreStar engages in a smear campaign: in this case, asserting that Inmarsat's efforts to participate in the Commission's public processes so Inmarsat can offer America a choice of 2 GHz MSS providers is somehow "anti-competitive." Contrary to MSV/TerreStar's unfounded allegations, Inmarsat supports existing U.S. policy to facilitate open competition, and the availability of alternative service providers for U.S. governmental, commercial and consumer users of MSS alike.

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[3] Inmarsat Global Limited, Petition for Declaratory Ruling to Provide Mobile Satellite Service to the United States Using the 2 GHz and Extended Ku Bands, File No. SAT-PPL-20050926-00184 (filed Sep. 26, 2005) ("Inmarsat 2 GHz Application").

[4] *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, 10788-89 ¶ 64 (2003) (citations omitted).

[5] *Id.*

Fortunately, the Commission has a long history of maintaining a policy that favors competition, consistently dismissing prior attempts by MSV/TerreStar to hoard MSS spectrum and attempt to preserve its position in the U.S. market in an anti-competitive manner:

- When a Canadian entity sought access to the U.S. MSS market at L-Band, MSV/TerreStar's predecessor (AMSC) alleged that "no other company should be allowed to provide L-Band service in the United States until AMSC has successfully coordinated the 20 megahertz of spectrum," and alleged that allowing a non-U.S. licensed system to impinge on MSV/TerreStar's exclusive right to use the L-Band would pose a "very high risk to competition in the U.S. MSS market."[6] The Commission did not buy this argument. Instead, it allowed access by a competitor.

- When Inmarsat sought access to the U.S. market at L-Band (through its service providers), MSV/TerreStar's other predecessor (Motient) complained about the threat of competition, and again asked the Commission to prevent an alternative satellite provider from accessing the U.S. market until Motient had access to 20 MHz of L-Band spectrum.[7] Nor did the Commission buy this argument. Instead, it again allowed access by a competitor.

Each time MSV/TerreStar has argued for the exclusive right to provide service in 2 x 10 MHz of spectrum, and each time it has asked the Commission to exclude new service providers in "its" band (like it is doing here), the Commission has summarily dismissed MSV/TerreStar's allegations that it needs governmental protection, and instead has found that the entry of competitive MSS providers in the U.S. market, including Inmarsat's entry, is good for Americans.[8] Indeed, such entry by Inmarsat has been a welcome relief to MSV/TerreStar's efforts to hold on to approximately 40% of the available L-Band spectrum over the U.S. without actually bringing forth any MSS innovation.

Inmarsat continues to believe that more competition in the nascent 2 GHz band will give rise to competing business propositions and enhanced innovation, to the great benefit of U.S. government, enterprise, and consumer users of MSS. Conversely, the cozy duopoly that MSV/TerreStar seeks in the nascent 2 GHz band is much more likely to produce a less than optimal result for the American public.

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6 *Applications of SatCom Systems, Inc., TMI Communications and Company, L.P.*, 14 FCC Rcd 20798, 20807-20808, 20810 ¶¶ 17, 24 (1999) ("*TMI Market Access Order*").

7 *Comsat Corporation d/b/a Comsat Mobile Communications, et al.* 16 FCC Rcd 21661, 21681, 21095-21696 ¶¶ 32, 63-64 (2001) ("*Inmarsat Market Access Order*") (finding that grant of market access to Inmarsat will promote competition in the U.S.).

8 *Id.* Having consistently found that Inmarsat's privatization and entry into the U.S. market has enhanced service options and competition, the Commission has declined to even entertain MSV/TerreStar's baseless allegations that Inmarsat is "dominant." *See FCC Report to Congress as Required by the ORBIT Act*, FCC 04-132, at 13-14 (2004); *see also Inmarsat Market Access Order*, 16 FCC Rcd at 21697-21700 ¶¶ 69-76; *FCC Report to Congress as Required by the ORBIT Act*, FCC 03-131, at 16 (2003).

B. Inmarsat's Record of Innovation Demonstrates That It Will Deliver a 2 GHz System.

MSV/TerreStar's attempt to compare its track record of technological innovation with Inmarsat's strains credibility and, more fundamentally, is belied by the record.

For more than twenty years, Inmarsat has been a leader and technological innovator in the field of MSS. Inmarsat has constructed twelve and launched ten new spacecraft ---five with some level of U.S. coverage---comprising three generations of new, ever-more sophisticated satellite technology. In November, Inmarsat is scheduled to launch yet another next-generation spacecraft to serve the U.S.---one that will provide IP-based services ("BGAN") at rates of approximately 500 Mbps, using terminals one-third the price, weight and size of existing Inmarsat terminals. And, if granted authority to do so, Inmarsat's 2 GHz system, planned to serve the U.S. by the end of 2010, will represent its fourth generation and an even more advanced spacecraft design.

Inmarsat's commitment to U.S. users and the U.S. market is amply demonstrated by (i) Inmarsat's investment, during a "down" economic market, in a $1.5 Billion next generation MSS system that will provide unrivalled MSS offerings in the U.S. commencing early next year, (ii) the fact that the U.S. Government is the biggest user of the Inmarsat system, including the President of the United States, the U.S. Army, Navy, Marines and Air Force, the U.S. Coast Guard, FEMA and other DHS-related users, (iii) the wide range of other U.S.-based users who rely on Inmarsat for their critical communications needs, including The New York City Fire Department, CNN, NPR, the Red Cross, and nearly every major airline and shipping line, among others, and (iv) Inmarsat's recent reallocation of its in-orbit capacity (away from other uses) to make additional channels available in the hurricane disaster zone along the Gulf Coast, and its provision of free airtime, all in support of related relief efforts.

Indeed, in virtually the same time period that MSV/TerreStar has had to develop its own MSS business, Inmarsat has established an unrivalled performance record, providing great comfort to the Commission that Inmarsat will deliver a robust, cutting-edge 2 GHz system on time and with service prices comparable to those of its competitors. Inmarsat has succeeded where others have failed by never losing sight of the roles that MSS is particularly well-suited to fulfill, and by building on three successive generations of satellite technology. Inmarsat's reputation for low cost, technical rigor, innovation and class-leading reliability and performance is unparalleled. Each generation of satellites Inmarsat has deployed has been (at the time of its launch) the most powerful satellite in its class, and each generation has delivered a capacity per satellite larger than the sum of the capacity all of its previous-generation satellites deployed at that date.

So much for MSV/TerreStar's claim that Inmarsat is not innovative. As to Inmarsat's L-Band ATC plans, Inmarsat will propose and deploy an ATC system, using its current generation of L-Band Inmarsat-4 spacecraft, when the business plan and collaboration

opportunity based on a hybrid MSS/ATC network has been finalized with Inmarsat's strategic partners.[9]

As to Inmarsat's prior interest at 2 GHz, history has proven that the time was not right for any 2 GHz system in 2001, when the Commission authorized eight entities to deploy MSS systems at 2 GHz. No one, not even MSV/TerreStar or ICO, deployed in the timeframes they originally promised the Commission, or in the longer time frames provided under their Commission authorizations. MSV/TerreStar and ICO each required license milestone extensions and/or waivers.[10] And unlike Inmarsat, neither MSV/TerreStar nor ICO was faced with intervening legislation---the ORBIT Act, enacted in March 2000---which precluded Inmarsat from deploying a 2 GHz system until this year. Thus, MSV/TerreStar is in no position to complain about Inmarsat's decision not to move forward with a 2 GHz system that Inmarsat determined, prior to accepting a Commission authorization, could not be deployed in accordance with the Commission's milestone requirements, and which Inmarsat therefore indicated it might pursue at a later time.[11] No one who accepted a Commission 2 GHz authorization the next year, in 2001, was able to deploy on time, either.

Now, almost five years later, (i) nearing completion of the deployment of its $1.5 billion next generation L-Band MSS system and the launch of its exciting new BGAN services, (ii) having fully privatized and subsequently conducted one of the most successful satellite company IPOs in history, (iii) after overcoming the market access obstacles presented by the ORBIT Act (which *precluded* Inmarsat from implementing a 2 GHz system until it had fully privatized), (iv) in response to the Commission's June 29, 2005 *Public Notices* soliciting interest in the 2 GHz band, (v) taking into account an entirely different commercial, technological and regulatory (ATC-enabled) environment, and (vi) in recognition that the growth potential of the

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[9] MSV/TerreStar's allegations that the Inmarsat-4 spacecraft will not support the provision of ATC is both wrong and wholly unsubstantiated.

[10] The Commission excused TMI's failure to move forward under Commission requirements due to Canadian legal complications, *waived* the application of the Commission's first 2 GHz MSS milestone, and *extended* TMI's final two milestones by 16 months. *See TMI and TerreStar,* 19 FCC Rcd 12603, 12623 ¶ 59 (2004).

ICO originally promised a global network of thirteen 2 GHz spacecraft, with commercial service beginning in 2000. ICO Letter of Intent to Access 2 GHz MSS Frequency Bands, SAT LOI-19970926-00163, at 3 (Sep. 26, 1997). ICO since has required *two milestone extensions. ICO Satellite Services G.P.*, 20 FCC Rcd 9797, 9803 ¶ 25 (2005) ("ICO's post-CDR timeline is inconsistent in two respects with the Commission's milestone schedule . . . . Granting the modification application with the milestone schedule that ICO proposes would extend the time allowed for starting physical construction and the time allowed for launch by approximately one year.").

[11] *See* Letter from Kelly Cameron, Counsel to Inmarsat, to Magalie Roman Salas, Secretary, FCC, File No. 190-SAT-LOI-97, at 2 (Nov. 21, 2000) (specifically reserving the right to "seek FCC authorization to provide MSS in the 2 GHz band at a later date if market conditions and regulatory policies should warrant it").

L-Band is ultimately limited, Inmarsat has done *precisely* what it told the Commission Inmarsat might do again: seek to use its unrivalled expertise to bring the benefits of 2 GHz MSS broadband and multimedia offerings to government, enterprise and consumer users in America.

Thus, Inmarsat (in stark contrast to MSV/TerreStar and ICO) hardly can be criticized for deciding not to waste the Commission's resources with systems that cannot be deployed on time, and instead withdrawing from the 2 GHz band until market conditions and technological developments dictated that Inmarsat could actually deliver next-generation 2 GHz MSS services on a reasonable time schedule.

The fact that Inmarsat chooses not to follow MSV/TerreStar's practice of applying prematurely for Commission authority, failing to deploy as proposed, modifying its design, and then reapplying for authority, is a badge of honor---not a basis for criticism. A brief recitation of MSV/TerreStar's track record in the past 25 years pales in comparison to Inmarsat's performance over that same time period:

- MSV/TerreStar and its Canadian partner (TMI) once held licenses to launch four L-Band spacecraft with U.S. coverage (at 62° W.L., 101° W.L., 106.5 ° W.L and 139° W.L.).[12] Since 1989, MSV and its Canadian partner have launched only two of those four authorized L-Band spacecraft (both of which now are damaged and not fully functional).

- MSV/TerreStar has not used all of its licensed orbital locations in a timely manner, holding onto two L-Band slots for more than a decade without actually building, and then reapplying for essentially one of the same orbital locations.[13]

- MSV/TerreStar's long-standing promise to deploy advanced L-Band replacement spacecraft remains to be realized. In 1997, when MSV/TerreStar's predecessor proposed to remove one of its spacecraft from U.S. service and to serve Africa instead, it also touted its plans to bring forth a "second generation system involving use of a higher

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[12] *See Amendment of Parts 2, 22, 25 of the Commission's Rules to Allocate Spectrum for and to Establish Rules and Policies Pertaining to the Use of Frequencies in a Land Mobile Satellite Service*, 4 FCC Rcd 6041 (1989), *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991), *on remand*, 7 FCC Rcd 266 (1992) (granting L-Band MSS authorizations for spacecraft at 62° W.L., 101° W.L. and 139° W.L.); *TMI Market Access Order*, 14 FCC Rcd 20798 at ¶2 (describing TMI's Canadian license for a spacecraft at 106.5° W.L.); *Motient Services Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, 16 FCC Rcd 20469 (2001) (approving combination of TMI's L-Band business with MSV's).

[13] *See* Letter from Lon C. Levin, Vice President, Mobile Satellite Ventures, to Marlene H. Dortch, Secretary, FCC (Jun. 30, 2003) (surrendering authorizations for L-Band MSS spacecraft at 62° W.L. and 139° W.L); *Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 479 (2005) (granting new authorization to launch and operate an L-Band MSS spacecraft at 63.5° W.L).

power satellite . . . when U.S. demand for MSS increases enough to warrant construction of such a system."[14] Apparently, MSV/TerreStar is more interested in businesses other than providing MSS to the U.S.: its L-Band replacement spacecraft remain at least 4-5 years away from actual construction and launch.

- In 1997, the Commission was promised that MSV/TerreStar's Canadian-sponsored 2 GHz system would be launched within 44 months of Canadian authorization, or by January 2, 2006.[15] Canadian authority issued 38 months ago,[16] yet that 2 GHz spacecraft is only in the earliest stages of physical construction and remains years away from completion.[17]

MSV/TerreStar may not have been able to develop a viable MSS business in the U.S. despite having three key advantages: (i) a regulatory monopoly in the provision of U.S. land mobile services until the Commission opened the U.S. market for TMI in 2000, (ii) a business arrangement with TMI since 2001 that effectively doubles the amount of L-Band spectrum and spacecraft that MSV can use to serve North America, and (iii) the opportunity to "jump start" its business by leasing capacity from Inmarsat (until MSV/TerreStar's predecessor launched its own L-Band satellite). However, MSV/TerreStar's inability to succeed does not warrant either MSV/TerreStar's criticism of Inmarsat here, or MSV/TerreStar's request for government largess in the form of a 250% percent increase in its current 2 GHz spectrum assignment, from 4 MHz in each direction to 10 MHz in each direction.

In contrast, the facts that Inmarsat's MSS business has succeeded in the meantime (despite historically having been constrained from competing directly against MSV/TerreStar in the U.S.), and that Inmarsat has achieved significant advancements in MSS technology, both in terms of spectrum efficiency, new services, and smaller and more affordable terminals, cannot be denied.

In short, contrary to what MSV/TerreStar would lead the Commission to believe, nothing in MSV/TerreStar's history demonstrates a level of entrepreneurial achievement or innovation that comes even close to Inmarsat's track record over more than two decades. Innovative and entrepreneurial behavior is not the sole preserve of companies like MSV/TerreStar.

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[14] *See AMSC Subsidiary Corporation*, 13 FCC Rcd 12316, 12318 ¶ 7 (1998).

[15] *See* TMI's Letter of Intent to Provide Mobile Satellite Service (MSS) in the 2 GHz Band, SAT-LOI-19970926-00161, at 8 (Sep. 26, 1997).

[16] *See* Letter from Gregory C. Staple, Counsel for TMI, to Marlene H. Dortch, Secretary, FCC, File No. 189-SAT-L03-97, IBFS Nos. SAT-LOI-19970926-00161 & SAT-AMD-20001103-60158, at 2 (July 26, 2002).

[17] TMI, March 2005 Milestone Certification, File Nos. SAT-LOI-19970926-00161, SAT-AMD-20001103-60158, & SAT-MOD-20021114-00237 (Apr. 11, 2005).

C. 2 GHz Is Uniquely Suited for Next-Generation Broadband and Multimedia Services.

MSV/TerreStar claims that Inmarsat should be able to achieve whatever it needs to achieve in the future within its existing L-Band spectrum assignment. Nothing could be further from the truth. Indeed, if it were, MSV/TerreStar itself would not need to seek access to 2 x 10 MHz of 2 GHz spectrum on top of the approximately 2 x 13 MHz of L-Band spectrum to which it currently has access. In fact, MSV/TerreStar currently seeks, in the aggregate, access to almost twice the amount of spectrum over North America to which Inmarsat has access.

As to the technical limitations of the L-Band, Inmarsat has detailed in its prior submissions in these proceedings how the 2 GHz band supports the use of channels that are wider in bandwidth than those that are used for MSS today and that would be well-suited to provide emerging broadband and multimedia MSS offerings. MSV/TerreStar glibly asserts that Inmarsat somehow "holds the key" to solving the high level of segmentation and fractionalization of the L-Band around the world (*e.g.*, shared use of the band by different operators in different regions; spectrum split up into segments as small as 50 kHz). Coming from an entity that has repeatedly declined to participate in mandatory annual multilateral L-Band spectrum negotiations since 1999, and whose absence has precluded a realignment of L-Band spectrum assignments over North America, this is a wholly absurd proposition. Moreover, it ignores the fact that five satellite operators in other parts of the world, who have no interest in the United States, have no vested interest in reconfiguring their operations to facilitate new L-Band services in the United States.

Contrary to MSV/TerreStar's claim, MSV/TerreStar has access to nearly as much L-Band spectrum over North America as Inmarsat. Despite having access to approximately 40% of the L-Band over North America, MSV/TerreStar is on pace to generate only some $30M of revenue from that spectrum in 2005,[18] as is has done for each of the prior three years.[19] Thus, it is particularly unreasonable for MSV/TerreStar, who is operating two outmoded and wounded spacecraft and who remains years away, if ever, from launching a replacement satellite, to claim that the state-of-the-art and just-launched Inmarsat-4 spacecraft design is "inefficient." Indeed, that claim is both counterintuitive and wholly unsubstantiated. Suffice it to say that the just-launched Inmarsat-4 is a quantum technological leap ahead of MSV/TerreStar's two wounded spacecraft, which were launched almost ten years ago.

MSV/TerreStar's bald assertions that the 2 GHz MSS band is no better suited to support the development of advanced and innovative broadband and multi-media services for mobile users ignore the ITU-endorsed conclusions regarding IMT-2000 spectrum, including the substantial benefits of having the terrestrial and satellite components of an IMT-2000 service in

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[18] *MSV Seeks Strategic Partners for Second Generation System*, SPACE NEWS, May 23, 2005, at 7; Motient Corp., Quarterly Report on Form 10-Q, for the period ended June 30, 2005, at 38, Securities and Exchange Commission File No. 0-23044 (filed Aug. 15, 2005).

[19] Motient Corp., Amendment No. 1 to Registration Statement on Form S-1, at M-3, Securities and Exchange Commission File No. 333-121862 (filed Feb. 14, 2005).

adjacent bands. Perhaps because it has a small and shrinking L-Band business, MSV/TerreStar ignores the fact that other, more successful L-Band MSS operators, including Inmarsat, are experiencing significant congestion in their current L-Band spectrum assignments. This congestion results from increasing customer demands for bandwidth-intensive applications that have caused a compound annual growth rate in Inmarsat's existing high-speed data services of over 15% for the past six years, and that will be further fuelled by the deployment of Inmarsat's new 500 Mbps BGAN service. Inmarsat remains at the forefront of MSS innovation that has stimulated customer demand and revolutionized the role of MSS in communications.

Inmarsat simply is not in a position, as MSV/TerreStar suggests, to deploy a high-data-rate multimedia platform at L-Band by (i) jettisoning its hundreds of thousands of existing MSS users of the L-Band who have, in the aggregate, invested billions of dollars in their terminal equipment and related communications infrastructure, or (ii) disregarding the adverse impact on those users of offering those types of high-data-rate multimedia services in the L-Band alongside existing L-Band services with very different channelization requirements.

D. Inmarsat Supports a Transparent 2 GHz Licensing Process With Effective Milestones.

Less than a year ago, and in the context of reinstating MSV/TerreStar's 2 GHz authorization, the Commission clearly stated that its "policy for reassignment of 2 GHz MSS spectrum freed as a result of future milestone rulings [has been] left for later determination."[20] Inmarsat and many others have recommended that such a policy be developed in a public notice and comment rulemaking context.[21] Indeed, in the absence of a clear spectrum policy regarding the 2 GHz band, Commission precedent indicates that a rulemaking proceeding "is generally a better, fairer and more effective method of implementing a new industry-wide policy than is the ad hoc and potentially uneven application of conditions in isolated proceedings affecting or favoring a single party."[22]

In the face of these clear Commission edicts, MSV/TerreStar asserts that there is no process acceptable to it, and no end result acceptable to it, other than a summary 250% increase in MSV/TerreStar's current 2 GHz spectrum assignment, the award of half of the 2 GHz band to each of it and ICO, and the resulting exclusion of any new entrants in the band. To this end, MSV/TerreStar also opposes Inmarsat's specific proposal for an open, transparent and

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[20] *TMI and TerreStar*, 19 FCC Rcd 12603, 12621 ¶ 52 n.97 (2004) (citing *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz, for New Advanced Wireless Services,* 18 FCC Rcd 2223, 2239 ¶ 32 (2003)).

[21] *See* the following Comments in IB Docket No. 05-221: Comments of Inmarsat, at 3 (Jul. 29, 2005); Comments of RF Marketing, Inc., at 7 (Jul. 29, 2005); Comments of United States Cellular Corp., at 6 (Jul. 27, 2005); Comments of CTIA – The Wireless Association, at 9-12 (Jul. 29, 2005); Comments of Sirius Satellite Radio Inc., at 14-16 (Jul. 29, 2005).

[22] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems in the Ku-Band Frequency Range*, 17 FCC Rcd 9614, 9699 ¶ 218 (2002).

streamlined licensing process at 2 GHz, one that would allow multiple entities besides Inmarsat to be promptly authorized at 2 GHz.

MSV/TerreStar baselessly alleges that the open processes Inmarsat has proposed in these proceedings for relicensing returned 2 GHz spectrum would allow only Inmarsat to "tie up" the rest of the 2 GHz band "without making any real commitment to deploy service." This statement is unfounded and spurious. Inmarsat has made clear that it intends to live up to the Commission's milestones and is willing to post a bond to secure its performance, and therefore has neither the ability nor the intention to tie up 2 GHz spectrum.[23] Moreover, Inmarsat's streamlined licensing proposal is fully consistent with existing Commission policies: (i) the Commission would develop minimum 2 GHz MSS broadband throughput and data rate requirements through a public notice and comment process, (ii) the Commission would solicit additional 2 GHz applications (from anyone interested), (iii) all entities authorized would have 30 days from licensing to decide whether to accept the terms of their license and post a bond, (iv) the Commission would retain its policy to constrain the number of applications that could be filed by entities who do not deploy in accordance with their milestones, and (v) entities who do not deploy in a timely fashion would not retain access to 2 GHz MSS spectrum.

E. Inmarsat's Specific Proposal for a 2 GHz MSS System.

Fortunately, the Commission need not address the inaccuracies of MSV/TerreStar's unfounded assertions about Inmarsat's intentions at 2 GHz.[24] Inmarsat has now made a concrete and specific proposal for a state-of-the-art, hybrid satellite/terrestrial 2 GHz MSS network, optimized to provide service to small, personal devices, which will be part of a

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[23] Curiously, TMI does not seem to have an issue with ICO's efforts to avoid a bond to secure performance under its new GSO MSS authorization. *See* ICO Satellite Services G.P., Petition for Partial Reconsideration, File No. SAT-MOD-20050110-00004 (filed Jun. 23, 2005).

[24] MSV/TerreStar continues to take Inmarsat's statements out of context, making baseless allegations that Inmarsat's only interest in the 2 GHz band is as a safety valve for its existing services, and that Inmarsat does not plan to deploy a 2 GHz system for years. Inmarsat has responded to these types of charges in its August 15, 2005 reply comments in IB Docket No. 05-221, explaining, among other things, that Inmarsat's June 1, 2005 IPO disclosures stated that Inmarsat might "*need to apply for additional spectrum to support our future services,*" and foreshadowed Inmarsat's pursuing the very type of 2 GHz MSS opportunity presented by the subsequent, June 29, 2005, *Public Notices*. Reply Comments of Inmarsat Ventures Limited, IB Docket No. 05-221, at 27 (Aug. 15, 2005) ("Inmarsat August 2005 Reply Comments"). Inmarsat's CEO made clear in the very same interview that MSV/TerreStar cites that "we see [the 2 GHz band] as a real opportunity, and we are not going to let this pass us by." Mark Holmes, *Executive Q&A: Inmarsat CEO Happy with IPO Performance*, Satellite News (Aug. 8, 2005). Inmarsat's intentions and plans to deploy a new class of MSS services at 2 GHz, and its timeframe for doing so, are specifically detailed in its 2 GHz system proposal now pending before the Commission.

global network of 2 GHz spacecraft.[25] And Inmarsat stands ready to accept a favorable Commission determination that it may serve the U.S. with that system, post a bond to secure its performance, and launch that system no more than two years after TMI's final 2 GHz license milestone (i.e., by the end of 2010, assuming Commission grant by early 2006).

In its 2 GHz MSS proposal, Inmarsat has fully detailed how its existing L-Band MSS system serves U.S. homeland security needs, and how its new 2 GHz MSS system will be able to provide even more advanced services to support those same needs. The vital role that the Inmarsat system serves in supporting U.S. defense and homeland security is well-established. For example, the U.S. Marines, FEMA, the State Police, the National Guard and Members of Congress, among others, have relied on Inmarsat services in the past month all along the Gulf Coast of the U.S. to facilitate both the coordination of hurricane relief efforts, and the provision of reliable emergency communications to U.S. citizens displaced by the recent natural disasters. Inmarsat has drawn deserved praise for the speed of its response and above all for the robustness and reliability of its service.

Experience shows how the global nature of Inmarsat's 2 GHz system further supports U.S. defense and homeland security goals: (i) the Inmarsat system has been heavily used by the U.S. military, particularly since September 11, in all parts of the world where U.S. forces have been deployed, and (ii) the Inmarsat system provides essential "lifeline" communications on almost all commercial aircraft, all passenger ships traversing international waters, and large cargo ships, facilitating aeronautical and maritime navigation, distress messaging, and search and rescue operations. Where no other communication service will reach, where weather or disasters preclude use of terrestrial networks, and where highly secure communications are needed, Inmarsat's MSS system provides a vital, instantaneously-available, and reliable link for private and governmental users alike, anywhere they travel in the world.

Inmarsat's hybrid satellite/terrestrial 2 GHz system will provide even more advanced capabilities to U.S. users, as that system will:

- be designed from the outset to support services to smaller and less expensive terminals, ensuring the availability and affordability of MSS to an even wider range of civil defense providers, first responders, local authorities, and aid agencies;[26]

- provide a higher level of interoperability with the terrestrial communications infrastructure, allowing seamless transitions to the critical role that satellite communications provides in the case of an emergency; and

- carry a wider range of end-user applications, such as detailed map updates, and point-to multipoint and multicast communications updates to widely distributed emergency responders who may be cut off from the terrestrial communications infrastructure.

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[25] *See* Inmarsat 2 GHz Application.

[26] In contrast, the Inmarsat-4 design was finalized and the spacecraft were already well under construction when the Commission first authorized ATC.

Moreover, owing to Inmarsat's established position as a global MSS operator, this system will provide a capability that neither MSV/TerreStar nor ICO can match: seamless, global coverage, to support warfare and peace-keeping operations, allow effective global responses to natural disasters and acts of terrorism, and also support the needs of international business users.

F. The Commission Must Address the Inadequacy of MSV/TerreStar's Showings.

MSV/TerreStar's submissions fail to address fundamental issues identified by Inmarsat that the Commission must address before it could even consider awarding more 2 GHz spectrum to MSV/TerreStar: (i) MSV/TerreStar's justification for more 2 GHz spectrum is not legally cognizable because it is based on efforts to deploy, and expenditures on, a satellite system that MSV/TerreStar is not authorized to deploy; and (ii) MSV/TerreStar's technical showings are self-contradictory and therefore unreliable from an evidentiary standpoint.[27]

MSV/TerreStar is building a different spacecraft than it is authorized to deploy, and is impermissibly seeking to bootstrap its request for a spectrum duopoly at 2 GHz based on its expenditures on that unauthorized system. MSV/TerreStar is free to build a different satellite system if it chooses to do so, and to seek Commission authority to implement such a modified system. But MSV/TerreStar's efforts and expenditures on a new, unauthorized satellite network that can utilize more spectrum simply may not be used to substantiate its request for an increased spectrum assignment.

When the Commission waived the further application of Section 319(d) of the Communications Act to spacecraft construction (which mandates that a construction permit be obtained prior to commencing construction of such a facility), the Commission also adopted an "anti-bootstrapping" policy. In a case where an entity builds a spacecraft different than the one it is authorized to build, the Commission will not take those unauthorized efforts into consideration when deciding whether to grant modified authority based on that different spacecraft design.[28] That policy was designed to avoid precisely what MSV/TerreStar seeks to do here---lever the Commission into giving MSV/TerreStar what it wants simply because MSV/TerreStar has apparently spent money on an unauthorized spacecraft design.

MSV/TerreStar has expressly based its case for more than 2 x 4 MHz of 2 GHz spectrum on the fact that it is building a new, high-powered (but unauthorized) satellite that can use more spectrum than its authorized satellite design. If the words "commence construction at

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[27] *See* Inmarsat August 2005 Reply Comments at 29-49.

[28] See *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, 11 FCC Rcd 21581, 21585 ¶ 9 (1996) ("*1996 Streamlining Order*") ("We underscore again that any [unauthorized] construction will be at the applicant's own risk, and we will not in any way consider the status of construction or expenditures made when acting on the underlying application."). The *Boeing* case that MSV/TerreStar cites does not modify this policy—it merely applies the well established principle that systems may be modified between licensing and construction. *See The Boeing Company,* 18 FCC Rcd 12317 (2003).

an applicant's own risk"[29] are to mean anything, they mean that MSV/TerreStar's unauthorized construction efforts are not legally cognizable in MSV/TerreStar's quest for a license modification for more spectrum.[30]

If the Commission nonetheless considers the data submitted about the new MSV/TerreStar spacecraft design, it is imperative that the Commission investigate and reconcile all of the inconsistencies in the data currently before it, because the record in these proceedings, as it now stands, is unreliable in that respect. As Inmarsat has detailed in its Reply Comments in IB Docket No. 05-221, the Commission should explore the following issues before considering MSV/TerreStar's request for more 2 GHz spectrum any further:

Why does MSV/TerreStar's technical analysis about the characteristics of its spacecraft provided on April 19, 2005 contradict the data that it provided in the same proceeding on July 29, 2005?[31]

Why has MSV/TerreStar not provided all of the technical and other data about its modified 2 GHz spacecraft required by Sections 25.114, 25.137, and 25.143 of the Commission's rules?[32]

Why should MSV/TerreStar be provided 2 x 10 MHz when its own technical analysis demonstrates that its spacecraft would substantially "power limited" and able to use only about 70% of such a spectrum assignment?[33]

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29 *1996 Streamlining Order* 11 FCC Rcd at 21585 ¶ 9.

30 Disregarding those efforts would not, as MSV/TerreStar alleges, "punish" it. Doing so would simply hold MSV/TerreStar to the same rules as all other satellite licensees.

31 In April, TerreStar/TMI represented that, *using 2 x 6.67 MHz*, its spacecraft would have the power to support 5800 simultaneous cdma2000 4.8 kbps voice circuits (Letter from Counsel for TMI and TerreStar, to Chief, International Bureau, FCC, Technical Appendix at 8 (Apr. 19, 2005)), but the bandwidth to support 2850 such uses. *Id.* In July, the numbers changed. TerreStar/TMI represented that, using 2 x 6.67 MHz, its spacecraft would have the power to support 6656 simultaneous cdma2000 4.8 kbps voice circuits, but would have the bandwidth to support 4560 such uses. Comments of TMI and TerreStar, IB Docket No. 05-221, Ex. A at 14 (July 29, 2005).

In April, TerreStar/TMI represented that, *using 2 x 10* MHz, its spacecraft would have the power to support 5670 simultaneous cdma2000 4.8 kbps voice circuits (Letter from Counsel for TMI and TerreStar, to Chief, International Bureau, FCC, Technical Appendix at 12 (Apr. 19, 2005))— about *29 percent fewer* than the 7952 TerreStar/TMI now claims would be supportable with a 2 x 10 MHz spectrum assignment (Comments of TMI and TerreStar, IB Docket No. 05-221, Ex. A at 18 (July 29, 2005)) and about 15 percent fewer than the 6650 TMI now claims would be supportable based on the power of the spacecraft. *Id.*

32 Neither the 1997 TMI LOI, as amended, nor the submissions in these proceedings, contain all of that information.

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In conclusion, MSV/TerreStar's recent submissions fail to provide any basis for awarding it a 250% increase in its current 2 GHz spectrum assignment to the exclusion of competitive new entrants in the 2 GHz band. Its attacks on Inmarsat are both unsubstantiated and groundless. Moreover, MSV/TerreStar's claims for more spectrum are not legally cognizable because they are based on an unauthorized spacecraft design, and contain self-contradictory data. The Commission therefore should provide entities other than MSV/TerreStar and ICO a chance to compete in the 2 GHz MSS band.

Respectfully submitted,

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Commissioner Jonathan S. Adelstein
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Karl Kensinger, Associate Division Chief, Satellite Division, International Bureau
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William Bell, Policy Branch, Satellite Division, International Bureau

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[33] TerreStar/TMI most recently demonstrated that with a 2 x 10 MHz assignment its new spacecraft could support about 15% fewer simultaneous voice circuits based on the power available on the spacecraft (6650) than the number based on such a spectrum assignment (7952). *See* Comments of TMI and Terrestar, IB Docket No. 05-221, Ex. A at 18 (July 29, 2005).